IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

WRIT PETITION NO : 6592 of 1995

Between:

The General Manager, Singareni Collieries Co., Ltd., Mandamari, Kalyanikhani, Adilabad District.

..... PETITIONER

AND

1. The Presiding Officer, Industrial Tribunal-I,Chandra Vihar,M.J.Road, Hyderabad.

2. The Workmen of Singareni Collieries Company Ltd., Mandamari, Adilabad District, represented by their joint Secretary, A.P.Collieries Mazdoor Sangh (INTUC), Bellampalli for Sri Kalpaku Gangaram.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or writ particularly one in the nature of writ of certiorari after calling for the records from the first respondent in I.D.No.56 of 1989 and quash the award dated 8-03-1994 passed therein.

Counsel for the Petitioner:MR.K.SRINIVASAMURTHY

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondent No.2:GP FOR SOCIAL WELFARE

The Court made the following :

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ORDER:

This writ petition is filed assailing the award of the Industrial Tribunal, Hyderabad in I.D.No.56 of 1989 dated 08-03-1994. The Government of India made the following reference to the Industrial Tribunal for adjudication;

> Whether the action of the management of M/s. S.C.Co.Ltd., Mandamarri in terminating the services of Sri Kalpaku Ganga Ram, Trammer, KK-I Incline w.e.f. 1-4-1988 is justified? If not to what relief the workmen is entitled?

2. It is the case of the petitioner that he was appointed as General Mazdoor on 14-3-1964 and after being subjected to medical fitness he joined the duty along with others, but the Medical Officer did not assess his age. At the time of his appointment, his age was about 30 years, but the Age Assessment Committee has not assessed any age of the employee. According to the Age Retirement Rules, the age has to be assessed by the Medical Officer of the Company. In the instant case, since the age assessment was not done by the Medical Officer, the retirement order of the petitioner was illegal.

3. It was resisted by the Management stating that at the time of appointment the petitioner was sent for medical examination for the purpose of assessment of his age. After completing the formalities, his age was assessed by the Medical Officer as 36 years as on 14-3-1964 and the same was entered in the service book and other records of the Company. Therefore, basing on the said entry, he is sought to be retired from service on attaining the age of superannuation. Therefore, there was no illegality or irregularity in retiring the employee. It is also stated that the retirement rules relating to medical examination would not apply to the case of the petitioner as he himself declared his age before the Medical Officer at the time of entering into service.

4. Before the Tribunal, the evidence was let in by the Management as well as the workman. One witness was examined as W.W.1 and Exs.W1 to W4 were marked for

the workman. On the other hand, one witness was examined as M.W.1 and Exs.M1 to M2 were marked for the respondent.

5. The learned Tribunal after considering the evidence came to the conclusion that the age of the petitioner was not assessed as required under Clause of 3 of the Memorandum of Settlement dated 17-9-1969 and found that terminating the service of the petitioner from the employment w.e.f 1-4-1998 was not justified and the Management was directed to reinstate the employee with full backwages and other attendant benefits. The said award came to be challenged in this writ petition.

6. The only principal point raised by the learned counsel for the Management is that the rules of retirement as entered in the Memorandum of Settlement dated 17-9-1969 will be applied only when the employee has not assessed his age at the time of entering into service and in such cases, the employee concerned will be sent to the Medical Board of the company, which will assess the age and on the basis of which, further action can be taken. But in the instant case, the employee himself has declared his age before the Medical Officer at the time of his medical examination before his entering into the service. In such an event, the medical examination is not necessary and even in the records also it was clearly mentioned that his age was declared as 36 years as on 14-3-1964. Under those circumstances, the award of the Tribunal is illegal and not sustainable in law.

7. Even though notices were served on the respondents, none appeared.

8. The point that arises for consideration is whether the award of the Tribunal is sustainable in law?

9. While the case of the workman is that he was not examined by the Medical Officer at the time of his appointment, the Management has come forward with definite plea that his age was assessed by the Medical Officer at the time of his entering into the service and the same was also entered in the service book and other records.

10. It is the case of the petitioner that as on 14-3-1964 his age was assessed as 36 years and at no point of time he has disputed his age. It is only when the notice was issued intimating that he was retired from service on attaining the age of superannuation, the dispute was raised. The memorandum of settlement, though entered, related only to the persons, who were not subjected to medical examination and whose age was not declared at the time of appointment. But in the instant case,

he was subjected to medical examination and his age was assessed as 36 years as on 14-3-1964 and he also disclosed the same fact before the Medical Officer.

11. Under those circumstances, the statement given by the workman cannot be allowed to be resiled at the subsequent stage. Thus, I find that the Tribunal failed to consider this crucial point into consideration. Once it is held that the requirement of assessing the age by the Medical Board is not necessary in view of his own declaration, nothing remains to be considered in this case. Thus, the Tribunal has committed error apparent on the face of the record.

12. Under those circumstances, the order of the Tribunal is set aside and the writ petition is allowed. No costs.

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23-12-2004

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this

Thursday, the Twenty Third day of December, Two thousand and four.

REGISTRAR

To

1. The Presiding Officer, Industrial Tribunal-I,Chandra Vihar,M.J.Road, Hyderabad. (with records)

2. The Workmen of Singareni Collieries Company Ltd., Mandamari, Adilabad District, represented by their joint Secretary, A.P.Collieries Mazdoor Sangh (INTUC), Bellampalli for Sri Kalpaku Gangaram.

3. Two CCs to the Government Pleader for Labour, High Court Building, Hyderabad. (OUT).

4. Two CCs to the Government Pleader for Social Welfare,High Court Building, Hyderabad. (OUT).

5. Two C.D. copies.

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